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UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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MAY 18 2004

Russell Patton Davis
1521 Quail Pt. Rd.
Virginia Beach, VA 23454

Office of the Director
Group 3600

In re Application of:

Russell Patton Davis

Serial No. 09/891,757

Filed: June 26, 2001

For: **An Integrated System for Shellfish :
Production**

PETITION UNDER

37 C.F.R. 1.103(a)

&

37 C.F.R. 1.181

This decision is in response to your letters of petition for suspension under 37 CFR 1.103(a) received on March 1, 2003, March 7, 2003, May 2, 2003, September 2, 2003, and March 5, 2004. The above noted petitions have also been collectively treated as a request for Supervisory Review under 37 C.F.R. 1.181 for the decision denying suspension of action under 37 C.F.R. 1.103(a) rendered by Primary Examiner Richard Price in the office action mailed on April 8, 2003.

MPEP 709 and 37 CFR 1.103(a) states in part:

709 [R-1] Suspension of Action

37 CFR 1.103. Suspension of action by the Office.

(a) Suspension for cause. On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph for good and sufficient cause. The Office will not suspend

action if a reply by applicant to an Office action is outstanding. Any petition for suspension of action

under this paragraph must specify a period of suspension not exceeding six months. Any petition for

suspension of action under this paragraph must also include:

- (1) A showing of good and sufficient cause for suspension of action; and
- (2) The fee set forth in § 1.17(h), unless such cause is the fault of the Office.

Subpart E of this part.

Suspension of action (37 CFR 1.103) should not be confused with extension of time for reply (37 CFR 1.136). ***It is to be noted that a suspension of action applies to an impending Office action by the examiner whereas an extension of time for reply applies to action by the applicant. In other words, the action cannot be suspended in an application which contains an outstanding Office action or requirement awaiting reply by the applicant. It is only the action by the examiner which can be suspended under 37 CFR 1.103.***

Suspension of action under 37 CFR 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR

A. Petition Under 37 CFR 1.103(a) with a Showing of Good and Sufficient Cause
A request that action in an application be delayed will be granted only under the provisions of 37 CFR 1.103, which provides for "Suspension of Action." A petition for suspension of action under 37 CFR 1.103(a) must:

- (A) be presented as a separate paper,*
- (B) be accompanied by the petition fee set forth in 37 CFR 1.17(h),*
- (C) request a specific and reasonable period of suspension not greater than 6 months, and*
- (D) present good and sufficient reasons why the suspension is necessary.*

If the requirements of 37 CFR 1.103(a) are not met, applicants should expect that their applications, whether new or amended, will be taken up for action by the examiner in the order provided in MPEP § 708, Order of Examination.

The petition filed on March 5, 2004 has been **DENIED** for the following reasons:

The petition requests suspensions for both US Application 09/891,757 filed June 26, 2001 and PCT application serial number PCT/US03/02250 filed January 27, 2003 in a single paper instead of a separate paper, failed to include the petition fee as set forth in 37 CFR 1.17(h), the date of receipt of the petition was within the time period of an outstanding office action mailed on January 14, 2004 awaiting a response from the applicant and a review of the reasons presented to justify a suspension has not been deemed persuasive as to warrant a suspension since such arguments are merely unsubstantiated allegations that do not touch on the merits of the case.

Further 37 CFR 1.3 states:

§ 1.3 Business to be conducted with decorum and courtesy.

Applicants and their attorneys or agents are required to conduct their business with the Patent and Trademark Office with decorum and courtesy. Papers presented in violation of this requirement will be submitted to the Commissioner and will be returned by the Commissioner's direct order. ***Complaints against examiners and other employees must be made in correspondence separate from other papers***

Applicant's complaint against Examiner Price should be made in a correspondence separate from other papers.

The petition filed on May 2, 2003 has been **DENIED** for the following reasons:

The petition failed to include the petition fee as set forth in 37 CFR 1.17(h), the date of receipt of the petition was within the time period of an outstanding office action mailed on August 12, 2003 awaiting a response from the applicant and a review of the reasons presented to justify a suspension has not been deemed persuasive as to warrant a suspension since such arguments are merely unsubstantiated allegations that do not touch on the merits of the case. Applicant's

complaint against Examiner Price should be made in a correspondence separate from other papers as per 37 CFR 1.3.

37 CFR 1.181 states in part:

37 CFR 1.181. Petition to the Commissioner.

“... (g) The Commissioner may delegate to appropriate Patent and Trademark Office officials the determination of petitions.”

MPEP 1004 states in part:

1004 Actions Which Require the Attention of a Primary Examiner

There are some questions which existing practice requires the primary examiner to be personally responsible for. The following actions fall in this category:

Final rejection (MPEP § 706.07).

Proposing an interference (MPEP § 2309).

Disposition of an amendment in an application in interference looking to the formation of another interference involving that application (MPEP § 2364.01).

Calling Administrative Patent Judge's attention to a discovered reference which makes a claim corresponding to a count unpatentable (37 CFR 1.641, MPEP § 2341).

Rejection of a previously allowed claim (MPEP § 706.04).

Classification of allowed cases (MPEP § 903.07).

Holding of abandonment for insufficient reply (MPEP § 711.03(a)).

Suspension of examiner's action (MPEP § 709).

Treatment of newly filed application which obviously fails to comply with 35 U.S.C. 112 (MPEP § 702.01).

Consideration of the advisability of a patentability report (MPEP § 705.01(a)).

Withdrawal of final rejection (MPEP § 706.07(d) and § 706.07(e)).

All examiner's answers on appeal (MPEP § 1208).

Decision on reissue oath or declaration (MPEP § 1414).

Decision on affidavits or declarations under 37 CFR 1.131 (MPEP § 715.08) and under 37 CFR 1.132 (MPEP § 716).

Decision as to acceptance of amendments, statements, and oaths or declarations filed under 37 CFR 1.48 (MPEP § 201.03).

International Preliminary Examination Reports (MPEP § 1879)

The petitions filed September 2, 2003, March 1, 2003 and March 7, 2003, have all been DENIED for the following reasons:

The petitions all failed to include the petition fee as set forth in 37 CFR 1.17(h), a review of the reasons presented to justify a suspension has not been deemed persuasive as to warrant a

suspension since such arguments are merely unsubstantiated allegations that do not touch on the merits of the case and applicant's complaint against Examiner Price should be made in a correspondence separate from other papers. As noted above, Primary Examiner Price did not "raise his personal authority" since the Commissioner under 37 CFR 1.181(g) had delegated the Primary Examiner to decide on "Suspension of examiner's action" petitions.

Decision on petition to invoke Supervisory Review under 37 C.F.R. 1.181

This is in response to the petitions above that have been treated as a request to invoke Supervisory Review under 37 C.F.R. 181 of the decision to deny the suspension under 37 C.F.R. 1.103(a) rendered by Primary Examiner Price in the office action mailed April 8, 2003. As noted above, applicant's reasons presented in the petitions mentioned above all fail to justify good and sufficient reasons for a suspension for cause under 37 C.F.R. 1.103(a). A review indicates that the arguments presented to show cause are merely unsubstantiated allegations that do not touch on the merits of the case to warrant a suspension. Therefore Examiner Price's assessment and decision to deny the petition for suspension under 37 C.F.R. 1.103(a) was proper. It is further noted that Primary Examiner Price did not "raise his personal authority" since the Commissioner under 37 CFR 1.181(g) had delegated the Primary Examiner to decide on "Suspension of examiner's action" petitions (See MPEP 1004). As no impropriety on the part of the examiner has been noted, the petition to invoke Supervisory Review under 37 C.F.R. 1.181 to overrule Primary Examiner Price's decision on applicant's Petition for Suspension of Cause under 37 C.F.R. 1.103(a) is **DENIED**.



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